

## § 21.3046

purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the eligible person is enrolled for the term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the eligible person is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment is actually terminated;

(2) The eligible person cancels his or her enrollment, and does not negotiate an educational benefits check for any part of the certified period of enrollment;

(3) The eligible person interrupts his or her enrollment at the end of any term, quarter, or semester within the certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;

(4) The eligible person requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the eligible person negotiated a check for educational benefits for the certified period is immaterial.

(Authority: 38 U.S.C. 3511)

(k) *Education loan after otherwise applicable delimiting date—spouse or surviving spouse.* VA will make a charge against the entitlement of a spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 day for each day of entitlement that would have been used had the spouse or surviving spouse been in receipt of educational assistance allow-

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ance for the period for which the loan was granted.

(Authority: 38 U.S.C. 3512)

[55 FR 28024, July 9, 1990, as amended at 57 FR 29799, July 7, 1992; 58 FR 26240, May 3, 1993; 61 FR 26109, May 24, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 67778, Dec. 9, 1998; 66 FR 32227, June 14, 2001; 68 FR 34320, June 9, 2003; 69 FR 62207, Oct. 25, 2004; 73 FR 2423, Jan. 15, 2008; 73 FR 79647, Dec. 30, 2008]

### § 21.3046 Periods of eligibility; spouses and surviving spouses.

This section states how VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(Authority: 38 U.S.C. 3512(b))

(a) *Beginning date of eligibility period—spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) The beginning date of eligibility—  
(i) Shall be determined as provided in paragraph (a)(2) of this section when—

(A) The permanent total rating is effective after November 30, 1968, or the notification to the veteran of the rating was after that date, and

(B) Eligibility does not arise under § 21.3021(a)(3)(ii) of this part.

(ii) For spouses for whom VA made a final determination of eligibility before October 28, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, whichever is more advantageous to the spouse.

(iii) For spouses for whom VA made a final determination of eligibility after October 27, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, or

(C) Any date between the dates specified in paragraphs (a)(2)(iii) (A) and (B) of this section as chosen by the eligible spouse.

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(iv) May not be changed once a spouse has chosen it as provided in paragraph (a)(2)(iii) of this section.

(3) If eligibility arises under §21.3021(a)(3)(ii) of this part, the beginning date of the 10-year eligibility period is—

(i) December 24, 1970, or

(ii) The date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(Authority: 38 U.S.C. 3501(a); Pub. L. 99-576)

(b) *Beginning date of eligibility period—surviving spouses.* (1) If VA determines before December 1, 1968, that the veteran died of a service-connected disability, the beginning date of the 10-year period is December 1, 1968.

(Authority: 38 U.S.C. 3512)

(2) If the veteran's death occurred before December 1, 1968, but VA does not determine that the veteran died of a service-connected disability until after November 30, 1968, the beginning date of the 10-year period is the date on which VA determines that the veteran died of a service-connected disability.

(3) If the veteran's death occurred before December 1, 1968, while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is December 1, 1968.

(4) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance before October 28, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which VA determines that the veteran died of a service-connected disability.

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance after October 27, 1986, VA will determine the beginning date of the 10-year period as follows.

(i) If the surviving spouse's eligibility is based on the veteran's death while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is the date of death.

(ii) If the surviving spouse's eligibility is based on the veteran's death from a service-connected disability, the surviving spouse will choose the beginning date of the 10-year period. That date will be no earlier than the date of death and no later than the date of the VA determination that the veteran's death was due to a service-connected disability.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

(6) Once a surviving spouse has chosen a beginning date of eligibility as provided in paragraph (b)(5) of this section, the surviving spouse may not revoke that choice.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

(c) *Ending date of eligibility period—(1) Spouses.* (i) If on or after December 27, 2001, VA makes a determination of eligibility for a spouse, the period of eligibility cannot exceed 10 years. The eligibility period can be extended only as provided in paragraph (c)(3) of this section and §21.3047.

(ii) If before December 27, 2001, VA made a determination of eligibility for a spouse, the eligibility period has no ending date unless the spouse changes his or her program of education. If on or after December 27, 2001, the spouse changes his or her program of education, the eligibility period cannot exceed 10 years. The beginning date of the eligibility period is determined as provided in paragraph (a) of this section. The 10-year eligibility period can be extended only as provided in paragraph (c)(3) of this section and §21.3047.

(iii) Notwithstanding the provisions of paragraph (c)(1)(i) of this section, if eligibility arises before October 24, 1972, educational assistance will not be afforded later than October 23, 1982, based on a course or program of correspondence, apprenticeship, or other on-the-job training, approved under the provisions of §21.4256, §21.4261, or §21.4262, except that VA may award educational assistance beyond October

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23, 1982, if the eligible spouse qualifies for the extended period of eligibility as provided in paragraph (c)(3) of this section and § 21.3047.

(2) *Surviving spouses.* (i) For surviving spouses, the period of eligibility cannot exceed 10 years and can be extended only as provided in paragraph (c)(3) of this section and § 21.3047.

(ii) If eligibility arises before October 24, 1972, educational assistance will not be afforded later than October 23, 1982, based on a course or program of correspondence, apprentice, or other on-the-job training approved under the provisions of § 21.4256, § 21.4261, or § 21.4262, except that VA may award educational assistance beyond October 23, 1982, if the eligible surviving spouse qualifies for an extended period of eligibility as provided in paragraph (c)(3) of this section and § 21.3047.

(iii) The eligibility period for a surviving spouse is not reduced by any earlier period during which the surviving spouse was eligible for educational assistance under this chapter as a spouse.

(Authority: 38 U.S.C. 3512; sec. 108(c)(4), Pub. L. 107–103, 115 Stat. 985)

(3) *Extensions due to certain orders dated after September 10, 2001.* Notwithstanding any other provisions of this section, if a spouse or surviving spouse, during the eligibility period otherwise applicable to such individual under this section, serves on active duty pursuant to an order to active duty dated after September 10, 2001, issued under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, or is involuntarily ordered by an order dated after September 10, 2001, to full-time National Guard duty under 32 U.S.C. 502(f), VA will grant the individual an extension of the ending date of his or her eligibility period. The extension will equal the length of the period of such active duty plus four months.

(Authority: 38 U.S.C. 3512; sec. 303(b), Pub. L. 108–183, 117 Stat. 2659)

(d) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, VA will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, VA will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of the course, or

(ii) The total additional amount of instruction that—

(A) \$2,206 provides during the period July 1, 2004, through September 30, 2004;

(B) \$2,248 provides during the period October 1, 2004, through September 30, 2005;

(C) \$2,316 provides during the period October 1, 2005, through September 30, 2006;

(D) \$2,408 provides during the period October 1, 2006, through September 30, 2007;

(E) \$2,467 provides during the period October 1, 2007, through September 30, 2008; or

(F) \$2,562 provides after September 30, 2008.

(Authority: 38 U.S.C. 3511(b))

(5) VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.

(6) An extension may not—

(i) Exceed maximum entitlement, or

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(ii) Extend beyond the delimiting date specified in paragraph (a) of this section or §21.3047, as appropriate.

(Authority: 38 U.S.C. 3511(b), 3512(b), 3532, 3586)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29799, July 7, 1992; 57 FR 60735, Dec. 22, 1992; 62 FR 51784, Oct. 3, 1997; 62 FR 59579, Nov. 4, 1997; 69 FR 62207, Oct. 25, 2004; 73 FR 2424, Jan. 15, 2008; 73 FR 79647, Dec. 30, 2008]

### §21.3047 Extended period of eligibility due to physical or mental disability.

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by §21.3046 provided the eligible spouse or surviving spouse:

(i) Applies for the extension within the appropriate time limit;

(ii) Was prevented from initiating or completing the chosen program of education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and

will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by §21.3046(c); and

(2) Must be on or before the ninetieth day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the ninetieth day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by §21.3046(c); or